

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

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STATE OF OKLAHOMA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:05-cv-00329-GKF-PJC
	)	
TYSON FOODS, INC., et al.	)	
	)	
Defendants.	)	
	)	

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**DEFENDANTS’ REPLY TO STATE OF OKLAHOMA’S RESPONSE  
TO “DEFENDANTS’ JOINT MOTION IN LIMINE TO PRECLUDE PLAINTIFFS  
FROM REFERRING TO OR IDENTIFYING POULTRY OPERATIONS  
IN THE ILLINOIS RIVER WATERSHED AS CONCENTRATED  
ANIMAL FEEDING OPERATIONS OR ‘CAFOS’” [DKT. NO. 2404]**

Come now Defendants Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Poultry, Inc., Cobb-Vantress, Inc., Peterson Farms, Inc., George’s, Inc., George’s Farms, Inc., Cargill, Inc., Cargill Turkey Production, LLC, Simmons Foods, Inc., Cal-Maine Foods, Inc., and Cal-Maine Farms, Inc., in reply to State of Oklahoma’s Response (“Plaintiffs’ Response”) (Dkt. #2493) to Defendants’ Joint Motion in Limine to Preclude Plaintiffs From Referring to or Identifying Poultry Operations in the Illinois River Watershed as Concentrated Animal Feeding Operations or "CAFOs" (Dkt. #2404) (“Defendants’ Motion”), and respectfully state as follows:

Although Plaintiffs concede that they will not argue, infer, or offer evidence suggesting that poultry operations in the Illinois River Watershed (the “IRW”) fall under the statutory or legal definitions for Concentrated Animal Feeding Operations governed by Oklahoma’s CAFO Act, Defendants take issue with Plaintiffs’ stated intention of referring generically to poultry operations in the IRW as concentrated animal feeding operations. As noted in Defendants’

Motion in Limine, and quoted by Plaintiffs, the term “concentrated animal feeding operation” invokes negative connotations and images of a farm which are inconsistent with the actual nature of independent contract grower operations in the IRW. Defendants’ Motion, p. 4. Plaintiffs suggest, incredibly, that by not referencing the statute, any prejudice from this mischaracterization would disappear. Plaintiffs’ Response, p. 3. This suggestion is incorrect, and this Court should not permit Plaintiffs to use this recognized term in any form at trial.

Plaintiffs argue that in the generic sense, the term “concentrated animal feeding operation,” with lower case letters, is an accurate description of poultry operations within the IRW. Plaintiffs contend that if not permitted to use this term, they would allegedly be deprived of a useful and accurate descriptor which would unfairly prejudice Plaintiffs. According to Plaintiffs, because they have no intention of referring to the statutory definition for Concentrated Animal Feeding Operations (in the upper case) or the CAFO Act itself, there will be no confusion among jurors between the statutorily defined term and the term in a generic sense. Thus, any amount of confusion would allegedly be remedied by the mere removal of capital letters, as though that could be done audibly:

Nor does the State intend to refer to any poultry operation in the IRW as a “Concentrated Animal Feeding Operation” as the term is defined in the CAFO Act. However, referring to poultry operations in the IRW as “concentrated animal feeding operations” in the generic sense, and without any references to the Oklahoma Concentrated Animal Feeding Operations Act and its technical definition, is a perfectly relevant description.

Pltfs.’ Resp., 2. Plaintiffs, however, offer no evidence or proof that if they do not mention the CAFO Act, the trier of fact can, and will, separate general conceptions regarding concentrated animal feeding operations covered by the CAFO Act from the actual facts in this case. To the contrary, many jurors will have a general familiarity with the term “concentrated animal feeding operation” and will associate this term with large dairy or swine facilities covered by the CAFO

Act and the well publicized implications and pejorative connotations expressed by some commentators that come with them. These preconceived negative connotations will not be erased if Plaintiffs merely refrain from mentioning the CAFO Act or the statutory definition. Rather, it is precisely these preconceived notions the Plaintiffs wish to draw upon through the use of the term "concentrated animal feeding operation."

Plaintiffs argue that use of the term in the generic sense is necessary to convey to the jury the actual nature of poultry operations in the IRW. However, a much more appropriate, and less prejudicial, term that can be used to describe poultry farms in the IRW is "registered poultry feeding operation," or simply "poultry feeding operation." This term is used by the Oklahoma statutes to refer to all of the types of poultry operations that are present in the IRW.

Although Plaintiffs argue that there is a minimal threat of prejudice associated with their proposed use of the term "concentrated animal feeding operation," any possibility of prejudice is removed if the Court simply precludes Plaintiffs from using that term. If Plaintiffs feel that Defendants are offering an incomplete picture of poultry operations in the IRW, they can offer further evidence without using this highly recognized, and potentially negatively-charged "descriptor" that cannot be separated from its inherent bias.<sup>1</sup>

WHEREFORE, Defendants Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Poultry, Inc., Cobb-Vantress, Inc., Peterson Farms, Inc., George's, Inc., George's Farms, Inc., Cargill, Inc., Cargill Turkey Production, LLC, Simmons Foods, Inc., Cal-Maine Foods, Inc., and Cal-Maine

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<sup>1</sup> In fact, Plaintiffs, in their response, give an example of just such evidence, stating that:

The fact of the matter is that poultry operations in the IRW involve concentrating large flocks of birds in poultry houses for the purposes of growing those birds to a desired weight range. A modern poultry house is, on average, populated by a flock of between 20,000 and 25,000 birds, and between five and six flocks generally pass through a house annually.

Pltfs.' Resp., p. 2.

Farms, Inc., respectfully ask this Court to grant Defendants' Motion in Limine to Preclude Plaintiffs From Referring to or Identifying Poultry Operations in the Illinois River Watershed as Concentrated Animal Feeding Operations or "CAFOs".

Respectfully submitted,

BY: /s/ Michael R. Bond

Michael R. Bond, *appearing pro hac vice*  
Erin Thompson, *appearing pro hac vice*  
Dustin R. Darst, *appearing pro hac vice*  
KUTAK ROCK LLP  
234 East Millsap Road, Suite 400  
Fayetteville, Arkansas 72703-4099  
(479) 973-4200 Telephone  
(479) 973-0007 Facsimile

-and-

Robert W. George, OBA #18562  
Bryan Burns, *appearing pro hac vice*  
TYSON FOODS, INC.  
2210 West Oaklawn Drive  
Springdale, Arkansas 72762  
(479) 290-4067 Telephone  
(479) 290-7967 Facsimile

-and-

Patrick M. Ryan, OBA # 7864  
Stephen L. Jantzen, OBA # 16247  
Paula M. Buchwald, OBA # 20464  
RYAN, WHALEY & COLDIRON, P.C.  
119 North Robinson, Suite 900  
Oklahoma City, Oklahoma 73102  
(405) 239-6040 Telephone  
(405) 239-6766 Facsimile

-and-

Jay T. Jorgensen, *appearing pro hac vice*  
Thomas C. Green, *appearing pro hac vice*  
Mark D. Hopson, *appearing pro hac vice*  
Gordon Todd, *appearing pro hac vice*  
SIDLEY AUSTIN LLP  
1501 K Street, N.W.  
Washington, D.C. 20005-1401  
(202) 736-8000 Telephone  
(202) 736-8711 Facsimile

Attorneys for Defendants Tyson Foods,  
Inc., Tyson Chicken, Inc., Tyson Poultry,  
Inc., and Cobb-Vantress, Inc.

BY: /s/James M. Graves  
(SIGNED BY FILING ATTORNEY WITH  
PERMISSION)

Woodson W. Bassett III  
Gary V. Weeks  
James M. Graves  
K.C. Dupps Tucker  
Earl "Buddy" Chadick  
Vincent O. Chadick  
BASSETT LAW FIRM  
P.O. Box 3618  
Fayetteville, Arkansas 72702-3618  
Telephone: (479) 521-9996  
Facsimile: (479) 521-9600

-and-

Randall E. Rose, OBA #7753  
George W. Owens  
OWENS LAW FIRM, P.C.  
234 W. 13<sup>th</sup> Street  
Tulsa, Oklahoma 74119  
Telephone: (918) 587-0021  
Facsimile: (918) 587-6111

Attorneys for George's, Inc. and George's  
Farms, Inc.

BY: /s/ A. Scott McDaniel

(SIGNED BY FILING ATTORNEY WITH  
PERMISSION)

A. Scott McDaniel, OBA #16460  
Nicole M. Longwell, OBA #18771  
Philip D. Hixon, OBA #19121  
Craig Mirkes, OBA #20783  
MCDANIEL, HIXON, LONGWELL  
& ACORD, PLLC  
320 South Boston Ave., Ste. 700  
Tulsa, Oklahoma 74103  
Telephone: (918) 382-9200  
Facsimile: (918) 382-9282

-and-

Sherry P. Bartley  
MITCHELL, WILLIAMS, SELIG,  
GATES & WOODYARD, PLLC  
425 W. Capitol Avenue, Suite 1800  
Little Rock, Arkansas 72201  
Telephone: (501) 688-8800  
Facsimile: (501) 688-8807

Attorneys for Peterson Farms, Inc.

BY: /s/ John R. Elrod

(SIGNED BY FILING ATTORNEY WITH  
PERMISSION)

John R. Elrod  
Vicki Bronson, OBA #20574  
P. Joshua Wisley  
CONNER & WINTERS, L.L.P.  
211 East Dickson Street  
Fayetteville, Arkansas 72701  
Telephone: (479) 582-5711  
Facsimile: (479) 587-1426

-and-

Bruce W. Freeman  
D. Richard Funk  
CONNER & WINTERS, L.L.P.  
4000 One Williams Center  
Tulsa, Oklahoma 74172  
Telephone: (918) 586-5711  
Facsimile: (918) 586-8553

Attorneys for Simmons Foods, Inc.

BY: /s/ Robert P. Redemann  
(SIGNED BY FILING ATTORNEY WITH  
PERMISSION)  
Robert P. Redemann, OBA #7454  
PERRINE, MCGIVERN, REDEMANN,  
REID, BERRY & TAYLOR, P.L.L.C.  
Post Office Box 1710  
Tulsa, Oklahoma 74101-1710  
Telephone: (918) 382-1400  
Facsimile: (918) 382-1499

-and-

Robert E. Sanders  
Stephen Williams  
YOUNG WILLIAMS P.A.  
Post Office Box 23059  
Jackson, Mississippi 39225-3059  
Telephone: (601) 948-6100  
Facsimile: (601) 355-6136

Attorneys for Cal-Maine Farms, Inc. and  
Cal-Maine Foods, Inc.

BY: /s/ John H. Tucker  
(SIGNED BY FILING ATTORNEY WITH  
PERMISSION)  
John H. Tucker, OBA #9110  
Theresa Noble Hill, OBA #19119  
RHODES, HIERONYMUS, JONES, TUCKER &  
GABLE, PLLC  
100 W. Fifth Street, Suite 400 (74103-4287)  
P.O. Box 21100  
Tulsa, Oklahoma 74121-1100  
Telephone: (918) 582-1173  
Facsimile: (918) 592-3390

-and-

Delmar R. Ehrich  
Bruce Jones  
Krisann C. Kleibacker Lee

FAEGRE & BENSON LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402  
Telephone: (612) 766-7000  
Facsimile: (612) 766-1600

Attorneys for Cargill, Inc. and Cargill  
Turkey Production, LLC



CERTIFICATE OF SERVICE

I certify that on the 28th day of August, 2009, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General  
Kelly Hunter Burch, Assistant Attorney General

drew\_edmondson@oag.state.ok.us  
kelly\_burch@oag.state.ok.us

Douglas Allen Wilson  
Melvin David Riggs  
Richard T. Garren  
Sharon K. Weaver  
Robert Allen Nance  
Dorothy Sharon Gentry  
Joseph P. Lennart  
David P. Page  
RIGGS ABNEY NEAL TURPEN ORBISON & LEWIS

doug\_wilson@riggsabney.com  
driggs@riggsabney.com  
rgarren@riggsabney.com  
sweaver@riggsabney.com  
rnance@riggsabney.com  
sgentry@riggsabney.com  
jlennart@riggsabney.com  
dpage@riggsabney.com

Louis W. Bullock  
Robert M. Blakemore  
BULLOCK BULLOCK & BLAKEMORE, PLLC

lbullock@bullock-blakemore.com  
bblakemore@bullock-blakemore.com

Frederick C. Baker  
William H. Narwold  
Elizabeth Claire Xidis  
Ingrid L. Moll  
Jonathan D. Orent  
Michael G. Rousseau  
Fidelma L. Fitzpatrick  
MOTLEY RICE, LLC

fbaker@motleyrice.com  
bnarwold@motleyrice.com  
cxidis@motleyrice.com  
imoll@motleyrice.com  
jorent@motleyrice.com  
mrousseau@motleyrice.com  
ffitzpatrick@motleyrice.com

**COUNSEL FOR PLAINTIFFS**

A. Scott McDaniel  
Nicole Longwell  
Philip D. Hixon  
Craig A. Mirkes  
MCDANIEL HIXON LONGWELL & ACORD, PLLC

smcdaniel@mhla-law.com  
nlongwell@mhla-law.com  
phixon@mhla-law.com  
cmirkes@mhla-law.com

Sherry P. Bartley  
MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC  
**COUNSEL FOR PETERSON FARMS, INC.**

sbartley@mwsgw.com

Robert P. Redemann  
David C. Senger  
PERRINE, MCGIVERN, REDEMANN, REID, BERRY & TAYLOR, PLLC

rredemann@pmrlaw.net  
dsenger@pmrlaw.net

Robert E. Sanders  
E. Stephen Williams  
YOUNG WILLIAMS P.A.

rsanders@youngwilliams.com  
steve.williams@youngwilliams.com

**COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.**

George W. Owens  
Randall E. Rose  
THE OWENS LAW FIRM, P.C.

gwo@owenslawfirmmpc.com  
rer@owenslawfirmmpc.com

James M. Graves  
Gary V. Weeks  
Woody Bassett  
K.C. Dupps Tucker  
Earl Lee "Buddy" Chadick  
Vince Chadick  
BASSETT LAW FIRM

jgraves@bassettlawfirm.com  
gweeks@bassettlawfirm.com  
wbassett@bassettlawfirm.com  
kctucker@bassettlawfirm.com  
bchadick@bassettlawfirm.com  
vchadick@bassettlawfirm.com

**COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.**

John R. Elrod  
Vicki Bronson  
Bruce W. Freeman  
D. Richard Funk  
P. Joshua Wisley  
CONNER & WINTERS, PLLC

jelrod@cwlaw.com  
vbronson@cwlaw.com  
bfreeman@cwlaw.com  
dfunk@cwlaw.com  
jwisley@cwlaw.com

**COUNSEL FOR SIMMONS FOODS, INC.**

John H. Tucker  
Colin H. Tucker  
Theresa Noble Hill  
Kerry R. Lewis  
Colin C. Deihl  
RHODES, HIERONYMUS, JONES, TUCKER & GABLE

jtucker@rhodesokla.com  
chtucker@rhodesokla.com  
thill@rhodesokla.com  
klewiscourts@rhodesokla.com

Terry W. West  
THE WEST LAW FIRM

terry@thewestlawfirm.com

Delmar R. Ehrich  
Bruce Jones  
Krisann C. Kleibacker Lee  
Todd P. Walker  
Melissa C. Collins  
FAEGRE & BENSON LLP

dehrich@faegre.com  
bjones@faegre.com  
kklee@faegre.com  
twalker@faegre.com  
mcollins@faegre.com

**COUNSEL FOR CARGILL, INC. AND CARGILL TURKEY PRODUCTION, LLC**

I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

J.D. Strong  
Secretary of the Environment  
State of Oklahoma  
3800 North Classen  
Oklahoma City, OK 73118

/s/ Michael R. Bond

Michael R. Bond